

Kenneth L. Covell
Law Offices of Kenneth L. Covell
712 Eighth Avenue
Fairbanks, Alaska 99701
Phone: (907) 452-4377
Fax: (907) 451-7802
E-mail: covelladmin@gci.net
kcovell@gci.net

Attorney for the Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT FAIRBANKS**

The Estate of Josiah Wheeler
pursuant to the assignment of
rights of insured Deborah
Overly and Terry Summers, and
Keith Wheeler and Rhett
Wheeler, individually and as
representatives of the Estate
of Josiah Wheeler

Case No.

Plaintiffs,

vs.

Garrison Property and Casualty
Insurance Company a subsidiary
of USAA INSURANCE COMPANY

Defendant.

COMPLAINT OF ACTION FOR DECLARATORY RELIEF

Plaintiffs, by and through undersigned counsel, state their
Complaint for declaratory relief and alleges as follows:

COMPLAINT

PARTIES

1) Plaintiff Josiah Wheeler was a 17 year old tenant of Deborah Overly residing at West Willow Way and Midnight Sun Drive in Tok Alaska in January of 2019.

2) The insured property owners and insurance policy holders are Deborah A. Overly and Terry Summers of Tok Alaska.

3) Defendant Garrison Property and Casualty, a subsidiary of USAA Insurance Company with headquarters in San Antonio Texas, insured the Overly property.

4) On January 4, 2019 Keith and Rhett Wheeler were residents of Montana and are currently residents of South Dakota.

JURISDICTION

Plaintiff re-alleges and incorporates herein by reference all of the allegations above and further allege as follows:

5) The United States District Court has jurisdiction over this matter due to diversity of the parties under **28 U.S.C §1332**.

FACTS

6) On or about January 4, 2019, Josiah Wheeler was taking a bath and died from carbon monoxide poisoning at his residence in Tok Alaska.

7) Deborah Overly and Terry Summers, the insured's, were negligent in operating and maintaining the hot water heater in the residence and carbon monoxide vented into the bathroom.

8) A wrongful death and survivors claim was made against Ms. Overly and Mr. Summers on behalf of the Wheelers.

9) The insured's, Deborah Overly and Terry Summers, gave notice of claim to USAA Insurance and USAA Insurance denied coverage under a "pollution exclusion". See Exhibit A.

However such exclusion does not apply: 1) by its own terms it does not apply to the facts of this case; and, 2) even if it might apply to the facts of this case, well established rules of interpretation of insurance policies hold that

when exclusions are ambiguous such exclusions are interpreted in the favor of the insured.

10) USAA's denial of coverage was in breach of contract, breach of the duty to defend, breach of the covenant of good faith and fair dealing, and/or bad faith, and/or was done with some motivation of self interest, or ill will, or with a reckless indifference to the interest of the insured.

11) The Insured's Deborah Overly and Terry Summers confessed judgment and made an assignment of any and all rights of action against USAA to Plaintiff Wheeler(s.) See Exhibits B and C

DECLARATORY ACTION

12) Wherefore, Plaintiff prays that this court rules that there is coverage here, and award appropriate damages.

RESPECTFULLY SUBMITTED this 8th day of December 2020, at Fairbanks, Alaska.

LAW OFFICE OF KENNETH L. COVELL

Attorney for the Plaintiffs

By: s/Kenneth L. Covell

Kenneth L. Covell, ABA 8611103

712 Eight Avenue

Fairbanks, Alaska 99701

Phone: (907) 452-4377

Fax: (907) 451-7802

E-mail: kcovell@gci.net

covelladmin@gci.net